

CHIEN DECLARATION

EXHIBIT A

GREG BINGHAM; May 23, 2019

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

STATE OF WASHINGTON)
)
Plaintiff,)
)
vs.) No. 3:17-CV-05806-RJB
)
THE GEO GROUP INC.)
)
Defendant.)

DEPOSITION UPON ORAL EXAMINATION
OF GREG BINGHAM

10:13 A.M.

MAY 23, 2019

800 FIFTH AVENUE

SUITE 2000

SEATTLE, WASHINGTON 98104



REPORTED BY: CATHERINE A. DECKER, CCR NO. 1975



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24 Also present: KATIE HALL, Legal Assistant

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1 insurance, his insurance for working, his personal
2 health insurance and things like that. His car, what's
3 the depreciation on his car that he uses to, say, drive
4 to and from the site. What have his tools cost, that
5 sort of thing. So in those three you have cost
6 reimbursement was last one, time and material, and
7 fixed price. And this is pretty typical of a fixed
8 price.

9 MR. DONOHUE: Can we take a break?

10 MR. POLOZOLA: Sure.

11 [A brief recess was taken.]

12 Q. [By Mr. Polozola] Okay. So I want to continue
13 on with just your summary of opinions here. And I
14 think on page 3 you say "There appears to have been no
15 ambiguity between ICE and GEO about the Voluntary Work
16 Program, the payment to program participants, and GEO's
17 reimbursement for those payments, which is detailed in
18 CLIN 0003 Detainee Voluntary Wages." Is that your
19 opinion today?

20 A. It is.

21 Q. On the payment to detainees aspect of that
22 sentence, what do you believe is unambiguous?

23 A. That they were to receive -- that it was to be
24 a passthrough cost and that they were to receive a
25 dollar a day -- a dollar a shift.



1 Q. And on that second issue of a dollar a shift,
2 is it your position that the contract requires GEO to
3 pay them a dollar per shift?

4 MR. DONOHUE: Object to the form.

5 A. Based on, like, the standards and practices in
6 my work in the federal procurement, I think people
7 would interpret that or would operationalize that as
8 that is what they needed to do is pay them a dollar a
9 day -- a dollar a shift, a dollar a day.

10 Q. Okay. What standards are you referring to?

11 A. Well, let me -- I mean, I could refer to the
12 Nash and Ciminic Good Administration of Government
13 Contracts, I could refer to the Contract Pricing
14 Reference Guides by the Defense Acquisition University,
15 could refer to the Formation of Government Contracts by
16 Nash and Ciminic, and various other treatises that kind
17 of form my opinions, the body of knowledge that I
18 developed. But based on that, that's how a contractor
19 would and should operationalize the contract.

20 Q. So I just want to understand clearly. This is
21 how you interpret the contract?

22 MR. DONOHUE: Object to the form.

23 A. I'm at page 1, the third paragraph. I'll just
24 say, I have not been asked to and do not express an
25 opinion on the proper interpretation of regulations



1 contracting officer.

2 Q. Right. So am I misunderstanding that ICE
3 could give GEO permission to exceed this amount and
4 bill ICE for an amount above \$114,975?

5 A. That's my understanding, yes.

6 Q. Are you aware of whether GEO has sought
7 permission to exceed payments under CLIN 3 from ICE?

8 A. Definitively, no, I don't.

9 Q. Does CLIN 3 or anywhere else in the contract
10 state that GEO is limited to paying detainees \$1 per
11 day?

12 MR. DONOHUE: Object to the form.

13 A. CLIN 3 indicates that GEO is limited to paying
14 the detainees to \$1 per day.

15 Q. So does GEO have the option of paying
16 detainees more than \$1 per day in your opinion?

17 A. Not without -- this program is an ICE program.
18 If ICE told GEO, We want you to pay something other
19 than a dollar per day, ICE has the ability to direct
20 GEO to do that. And under a circumstance like that, I
21 think it would be typical of GEO to follow the
22 directions given by the contracting officer or the COR.

23 Q. So back to kind of the question that started
24 this part of our conversation. In addition to CLIN 3
25 and the paragraph on the voluntary work program that



1 they need to make more trips in the vehicles than they
2 had anticipated. And so as the fuel costs -- and so it
3 appears as if GEO is going to exceed the not-to-exceed
4 limit on fuel cost. And GEO goes to the ICE COR and
5 the COR says, I understand. Continue to send me your
6 receipts. I'm going to mod the contract to increase
7 that not to exceed. That's a noncontroversial, kind of
8 straightforward one.

9 Another one might be more of what's called a
10 constructive change, and that is often, somehow the
11 parties disagree about whether this was a change to the
12 contract. So maybe in this circumstance ICE believes
13 that this is something covered by the statement of
14 work, by the performance of work statement that GEO is
15 obligated to perform. And GEO believes that it is not
16 covered by the performance work statement, that it is
17 something that GEO should be compensated for. And so
18 then in those circumstances sometimes there is a
19 request for equitable adjustment or a modification. A
20 request for equitable adjustment is a type of a
21 modification. And the parties negotiate -- in the
22 extremes they actually litigate over these REAs, but
23 they negotiate and come to terms on them.

24 MR. DONOHUE: Can we take a break when
25 you get a chance?



1 MR. POLOZOLA: Sure.

2 [A brief recess was taken.]

3 Q. So we were discussing contract modifications
4 before the break, and I want to follow up. Are you
5 aware of whether GEO has proposed modifications to this
6 contract regarding repayment of detainee wages?

7 A. Am I aware if there were any?

8 Q. If GEO has requested a modification to the
9 contract with regard to CLIN 3 payment of detainee
10 wages.

11 A. I think I remember a reference to that in one
12 of the deposition transcripts.

13 Q. What was the reference that you're thinking
14 of?

15 A. I think Ryan Kimble made a reference to it,
16 but it could have been Bill McHatton. I don't
17 remember.

18 Q. So I take it based on that you don't recall
19 the outcome of that request?

20 A. I don't recall the outcome, no.

21 Q. Could GEO request a modification to CLIN 3 to
22 pay detainees more than \$1 per day?

23 MR. DONOHUE: Object to the form.

24 A. I know of no limitations on GEO to request a
25 change to the contract. It might be denied, but I know



1 of no limitation on GEO to make the request.

2 Q. Okay. We're going to grab an exhibit that was
3 previously marked as Exhibit 188.

4 MR. POLOZOLA: For the record it's
5 GEO-State 046233 [handing.]

6 A. [Witness reviews document.]

7 Q. [By Mr. Polozola] So you can have as much time
8 as you need, but I'll just ask, have you seen this
9 document before?

10 A. I don't believe so.

11 Q. And have you seen a document of this nature
12 before, not this specific one but a document like this?

13 MR. DONOHUE: Object to the form.

14 A. Yeah. I've seen lots of letters like this
15 asking for a contract mod or a request for equitable
16 adjustment.

17 Q. Okay. So the subject line in this document is
18 "Request for equitable adjustment," and it lists the
19 contract number Northwest Detention Center. Is this a
20 standard request for modification of the sort you were
21 discussing earlier, or is this different from what you
22 were envisioning?

23 A. I've seen ones like this. This is on the
24 simple side; it's straightforward. I've seen others
25 that were much more complicated than this. This makes



1 [The question was read back by the reporter.]

2 Q. I can ask it more directly if you would like.

3 A. Yes.

4 Q. Okay. Do the parties have to live with the
5 terms of the contract absent the contract modification?

6 MR. DONOHUE: Object to the form.

7 A. Both parties can change the contract. And I'm
8 not talking about just a formal change, like a mod to
9 the contract, the paper document. The government, ICE,
10 can impose changes on the contractor, and sometimes
11 they don't realize they're doing it. They just
12 misinterpret or they interpret the contract differently
13 as to thinking that the contractor has to do something,
14 that this is included in their scope of work, and the
15 contractor disagrees. And so the government in that
16 instance just barrels ahead saying you must do XYZ.
17 And the contractor typically has to continue performing
18 and then ask for this equitable adjustment.

19 So you're talking about -- and there's also
20 force majeure, just changes outside the control of the
21 parties. So I don't have a succinct answer yes or no
22 to that. I mean, if both parties -- often both parties
23 don't live precisely to the contract. They require
24 things, ask for things, influence to get things that
25 are not precisely in the contract, but they are not



1 ICE and say, I would like you to mod CLIN 3 to say
2 something different than CLIN 3 currently says.

3 Q. Would that be consistent with this provision
4 of the PBNDS?

5 MR. DONOHUE: Object to the form.

6 A. Well, I just said that they could go to ICE
7 and say, we would like to modify CLIN 3 in any -- and
8 I'm just directing in any way -- to increase the price,
9 to reduce its actual cost. To increase the actual
10 cost, reduce the actual cost, they could ask for any --
11 I don't know why they would, but you're asking is it
12 theoretically possible? It is theoretically possible.

13 Q. So could GEO pay detainees more than \$1 per
14 day under the PBNDS 2011?

15 MR. DONOHUE: Object to the form.

16 A. I don't think they could under the contract.

17 Q. That wasn't my question. I'm referring to
18 this section on compensation that we just reviewed.
19 Does this limit GEO to paying detainees \$1 per day?

20 A. I think the contract limits them to paying
21 them the actual cost of \$1 per day. This says at least
22 \$1.

23 Q. Okay. And can we agree that "at least \$1"
24 means that you could pay more than \$1 under this
25 section of the PBNDS?



1 MR. DONOHUE: Object to the form.

2 A. This says at least a dollar, but the contract
3 says actual cost of a dollar, exactly a dollar. I
4 added the word "exactly," but it says "actual cost of
5 \$1."

6 Q. So you're not offering any opinion in this
7 case that the PBNDS requires payment of only \$1 to
8 detainees in the VWP, correct?

9 A. I don't think it governs on the payment of --
10 CLIN 3 governs my opinion on the passthrough cost, the
11 actual cost that shall be paid to the detainees and
12 reimbursed by ICE.

13 Q. And why doesn't this govern in your view?

14 MR. DONOHUE: Object to the form.

15 A. Well, I mean, CLIN 3 is very clear that it's
16 exactly a dollar. This can be a dollar or more. So
17 how do you interpret the contract, and you're asking
18 for contract interpretation of questions -- I'm giving
19 that, even though I said in my report, for my purposes
20 in my report I did not provide contract interpretation.
21 But I'm doing it now. The way to interpret those
22 consistently would be exactly \$1. That comports with
23 CLIN 33 and it comports with PBNDS.

24 Q. So back to the contract modification topic we
25 discussed a bit earlier. Could GEO as you understand



1 Q. And so directing your attention to RFA 67 and
2 I'll find you the page.

3 MR. DONOHUE: Page 21.

4 MR. POLOZOLA: Thank you.

5 Q. [By Mr. Polozola] So the request for admission
6 no. 67 says, "Please admit that GEO has the option to
7 pay more than \$1 a day to detainee workers for work
8 performed in the VWP at the NWDC." And the response is
9 "Admit." Is your testimony consistent with GEO's
10 position in this case --

11 MR. DONOHUE: Object to the form.

12 Q. -- as stated in RFP 67?

13 A. What I said is not consistent with RFA 67.

14 Q. Does this modify or cause you to want --
15 excuse me. Having viewed this, does this modify any of
16 the opinions you hold in this case?

17 A. No.

18 Q. Okay. So looking at page 10 of your report
19 here, second full paragraph, where you're discussing
20 passthrough costs. And there are two sentences here
21 about costs associated with administering the voluntary
22 work program. So the last sentence here says "All
23 costs GEO expected to incur in administering the
24 Voluntary Work Program had to be factored into the
25 fixed prices included in the CLINs."



1 Q. Are you referring to the deposition of Ryan
2 Kimble as GEO's 30(b)(6) representative?

3 A. Yes.

4 Q. Have you reviewed -- is that the only
5 deposition transcript from Ryan Kimble that you've
6 reviewed?

7 A. Yes.

8 Q. Okay. Just wanted to clarify.

9 A few followup questions on modifications
10 related to wage determinations. I believe we discussed
11 those earlier. And if I recall, you were
12 distinguishing between what might be viewed as
13 controversial versus noncontroversial requests for
14 modification; is that correct?

15 A. That is correct.

16 Q. So for a request for modification relating to
17 updated wage payment standards -- well, let me pause.
18 Do you have an understanding of what I'm referring to
19 when I say a request for modification related to
20 updated wage payment standards?

21 A. Yes.

22 Q. And what is that understanding so that we're
23 clear that we're on the same page?

24 A. That there is a standard wage and that it's --
25 the contract is to be modified -- in the contract, in



1 the proposal, there were forecasted wages, wage rates
2 to be paid each year in the future. And the forecasted
3 wage rates -- if the actual wage rates differed from
4 what was forecasted, then GEO could request a
5 modification related to that.

6 Q. So is that the Department of Labor wage
7 determinations?

8 A. Yes, I believe so.

9 Q. I just want to be clear that we are referring
10 to the same thing.

11 A. My understanding is that relates to employees.

12 Q. So you have a copy of the contract, I believe,
13 somewhere in the bottom of your stack.

14 A. So what page?

15 Q. I'm looking at GEO-State 036980. There are a
16 number of similar schedules.

17 A. I'm on the page you referenced.

18 Q. Okay. And the only question is, is this an
19 example of the wage determination schedules that we
20 were just discussing?

21 A. Yeah. I mean, this one is dated, the date of
22 revision on the upper right of 7-25-14, and then there
23 would be presumably later ones that would come out that
24 would be -- that would affect, like, option year 1,
25 option year 2, option year 3.



1 different than a dollar a day. Separately, if you -- I
2 thought your question was -- I think your initial
3 question was treat them as employees. And to treat
4 someone who doesn't meet all the requirements as an
5 employee would be in breach of the contract, I believe.

6 Q. Is that based on your interpretation of the
7 contract?

8 MR. DONOHUE: Object to the form.

9 A. Yeah. Things like breach are -- I mean, I
10 teach COs and CORs and company people about breach and
11 about the changes and that sort of thing. So I have a
12 layman's, at least, understanding of that. But as I
13 said, I'm not here to interpret the contract and I
14 offer no opinions in my report on interpretation of the
15 contract.

16 Q. Okay. In this solicitation process -- we'll
17 change tack for a moment. So in this solicitation
18 process, are you aware of whether GEO's audited
19 financial statements were provided to ICE as part of
20 its proposal?

21 A. I don't know if they were provided to ICE as
22 part of their proposal.

23 Q. Is it typical for contractors to be required
24 to provide financial statements when submitting a
25 proposal?



1 REPORTER'S CERTIFICATE

2
3 I, CATHERINE A. DECKER, the undersigned Certified
4 Court Reporter, pursuant to RCW 5.28.010 authorized to
5 administer oaths and affirmations in and for the state
6 of Washington, do hereby certify that the sworn
7 testimony and/or proceedings, a transcript of which is
8 attached, was given before me at the time and place
9 stated therein; that any and/or all witness(es) were by
10 me duly sworn to tell the truth; that the sworn
11 testimony and/or proceedings were by me
12 stenographically recorded and transcribed under my
13 supervision, to the best of my ability; that the
14 foregoing transcript contains a full, true, and
15 accurate record of all the sworn testimony and/or
16 proceedings given and occurring at the time and place
17 stated in the transcript; that a review of which was
18 requested; that I am in no way related to any party to
19 the matter, nor to any counsel, nor do I have any
20 financial interest in the event of the cause.

21 WITNESS MY HAND this 10th day of June 2019.

22 *Catherine A. Decker*
23

24 CATHERINE A. DECKER,
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